

s STATE OF MICHIGAN
COURT OF APPEALS

WAYNE COUNTY EXECUTIVE, COUNTY OF
WAYNE, and WAYNE COUNTY
PROSECUTOR,

UNPUBLISHED
July 19, 2007

Plaintiffs,

and

MAYOR OF DETROIT and CITY OF DETROIT,

Plaintiffs-Appellees,

v

NICHOLAS AGGOR and ROSE ALBA AGGOR,

Defendants-Appellants,

and

238 MT. VERNON, NANCY JOHNSON and
HAWTHORNE MANAGEMENT COMPANY,
INC.,

Defendants.

No. 266183
Wayne Circuit Court
LC No. 03-326976-CH

NICHOLAS AGGOR,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

No. 266184
Wayne Circuit Court
LC No. 04-435815-NZ

Before: Cooper, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

In Docket No. 266183, defendants Nicholas Aggor and Rose Alba Aggor (the Aggors), appeal by leave granted from an order for abatement of a nuisance on property located at 238 Mt. Vernon in Detroit. In Docket No. 266184, plaintiff Nicholas Aggor appeals by leave granted from an order granting defendant Detroit's motion for summary disposition entered in a negligence action. We affirm in both cases.

Docket No. 266183

The Aggors argue that the circuit court erred by entering a judgment requiring the Aggors to transfer title to 238 Mt. Vernon in order to abate the nuisance. Michigan's courts recognize that a trial court has the inherent power to control the movement of cases on its docket. *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963); see also MCL 600.611. This Court will not disturb a trial court's exercise of its inherent power unless a party shows a clear abuse of discretion. *Persichini v Beaumont Hosp*, 238 Mich App 626, 642; 607 NW2d 100 (1999). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

In *Maldonado*, *supra* at 376, our Supreme Court emphasized the circuit court's inherent power to enforce its orders:

We reiterate that trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action. *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963); *Persichini*, [*supra* at 639-640]; *Prince v MacDonald*, 237 Mich App 186, 189; 602 NW2d 834 (1999). This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. See *Chambers v NASCO, Inc*, 501 US 32, 43; 111 S Ct 2123; 115 L Ed 2d 27 (1991).

We further acknowledge that our trial courts also have express authority to direct and control the proceedings before them. MCL 600.611 provides that "[c]ircuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments."

On November 4, 2004, the Aggors agreed to entry of an order requiring them to abate the nuisance at 238 Mt. Vernon. There is no evidence in the record suggesting that the Aggors abated the nuisance within the time prescribed by the November 4, 2004, stipulated order. Accordingly, on April 18, 2005, the circuit court entered an order requiring them to appear on April 28, 2005, to show cause why it should not enter plaintiffs' proposed judgment setting aside the court order and for the abatement of the nuisance. On August 28, 2005, the circuit court entered judgment for abatement of the nuisance and for costs in favor of plaintiffs. The circuit court found that the Aggors had violated the November 4, 2004, order requiring them to abate the nuisance and ordered that title to the property be transferred to Wayne County so it could be sold at public auction, with a portion of the proceeds paid to plaintiffs for prosecuting this action.

We conclude that the circuit court's judgment against the Aggors was simply the product of its inherent ability to enforce its orders – specifically, the November 4, 2004, stipulated order requiring defendants to abate the nuisance at 238 Mt. Vernon. See *Maldonado, supra* at 376. The circuit court had the power to require the Aggors to abate the nuisance. MCL 600.2940(1). Further, in the case of any nuisance, the circuit court may abate the nuisance at the expense of the property owner. MCL 600.2940(3). The Aggors have failed to demonstrate that the circuit court's judgment constituted an error requiring reversal.

The Aggors alternatively argue that the circuit court erred by dismissing their “counterclaim.” The Aggors, however, did not file a counterclaim in this matter. Under MCR 2.111(B)(1), a counterclaim must contain a “statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend” Here, defendants merely alleged in their answer that “[t]he defendants are demanding damages in the amount of ten million dollars because the police deliberately caused the defendant's historical apartment building to be burnt down AND ALSO, which caused a financial hindrance for the repair and the up keeping of 238 MT. VERNON.” This single sentence does not satisfy the pleading requirements of MCR 2.111(B). Rather, this sentence appears to be nothing more than a statement that the Aggors had filed a separate action seeking damages in relation to another property, 92 Alfred, which they did.

The Aggors also suggest that plaintiffs' demolition of 238 Mt. Vernon was an unconstitutional taking in violation of the United States and Michigan constitutions. This argument is without merit. As explained recently by this Court:

The federal and state constitutions both proscribe the taking of private property for public use without just compensation. US Const, Am V; Const 1963, art 10, § 2; *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 23; 614 NW2d 634 (2000); *Oakland Co Bd of Rd Comm'rs v JBD Rochester, LLC*, 271 Mich App 113, 114; 718 NW2d 845 (2006). The Takings Clause of the Fifth Amendment is substantially similar to the Takings Clause of the Michigan Constitution, *Tolksdorf v Griffith*, 464 Mich 1, 2; 626 NW2d 163 (2001), and the two provisions should generally be interpreted coextensively, see *Peterman v Dep't of Natural Resources*, 446 Mich 177, 184 n 10; 521 NW2d 499 (1994). The nuisance exception to the prohibition on unconstitutional takings provides that because no individual has the right to use his or her property so as to create a nuisance, “the [s]tate has not ‘taken’ anything when it asserts its power to enjoin [a] nuisance-like activity.” *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 491 n 20; 107 S Ct 1232; 94 L Ed 2d 472 (1987). Indeed, “[c]ourts have consistently held that a [s]tate need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance.” *Id.* at 492 n 22. [*Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 555 n 22; 730 NW2d 481 (2007).]

Here, it cannot seriously be disputed that 238 Mt. Vernon was a nuisance. As discussed, the Aggors conceded as much by stipulating to the circuit court's November 4, 2004, order. Nor is there any evidence in the record that the Aggors sufficiently abated the nuisance before title to

the property was transferred to Wayne County. Accordingly, there was no unconstitutional taking. The circuit court did not err by entering judgment in favor of plaintiffs.

Docket No. 266184

Nicholas argues that the circuit court erred by granting Detroit's motion for summary disposition on statute of limitations grounds and by subsequently denying Nicholas's motion for reconsideration.¹ We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. See *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 436; 684 NW2d 864 (2004). The interpretation and application of a statute of limitations presents a question of law that is reviewed de novo. See *Pohutski v City of Allen Park*, 465 Mich 675, 681; 641 NW2d 219 (2002).

Under MCR 2.116(C)(7), a party may move for summary disposition on the ground that a claim is barred by the statute of limitations. In evaluating a motion brought under MCR 2.116(C)(7), a court considers all the documentary evidence submitted by the parties, to the extent that the content or substance would be admissible as evidence, and accepts as true the contents of the complaint unless those contents are contradicted by affidavits or other appropriate documents. *Bryant, supra* at 419; MCR 2.116(G)(6). "If the pleadings demonstrate that a party is entitled to judgment as a matter of law, or if affidavits or other documentary evidence show that there is no genuine issue of material fact, the trial court must render judgment without delay." *Harris v City of Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992).

On November 19, 2004, Nicholas filed a complaint that pleaded counts entitled "negligence" and "Michigan Consumer Protection Act." Although they are not definitively set forth in his complaint, Nicholas later argued that he also pleaded civil rights and constitutional violations against Detroit.

Actions for negligence are subject to the general three-year limitations period prescribed in MCL 600.5805(10). *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 41; 709 NW2d 589 (2006). MCL 600.5805 provides that Nicholas's negligence claim must be brought within three years of the date the claim accrued:

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

* * *

¹ Nicholas's argument that the court should have granted him a default judgment because a representative for Detroit did not appear for a hearing is without merit; the representative appeared shortly after the start of the hearing.

(10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

Furthermore, accrual under the three-year statute of limitations is measured by “the time the wrong upon which the claim is based was done regardless of the time when damage results.” MCL 600.5827. Nicholas alleges that the “wrong” occurred when a Sergeant Green refused to prosecute certain trespassers at Nicholas’s residence. Although Nicholas fails to plead the specific date that this occurred, he argues that his apartment building suffered fire damage by the trespassers on March 13, 2001. Even assuming that Nicholas’s negligence claim accrued on March 13, 2001, he filed his complaint on November 19, 2004, more than three years after his claim accrued. The circuit court, therefore, did not err by ruling that Nicholas’s negligence claim was barred.

The Michigan Consumer Protection Act’s (MCPA) limitations period, MCL 445.911(7), provides:

An action under this section shall not be brought more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends at a later date. However, when a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

The circuit court granted Detroit’s motion for summary disposition on statute of limitations grounds. Although Nicholas’s MCPA claim was arguably² commenced within the six-year limitations period applicable to an MCPA claim, the MCPA is inapplicable to his claim, and this Court will not reverse a trial court’s order if the court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). The MCPA prohibits the use of “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce” MCL 445.903(1). “Trade or commerce” is defined as “the conduct of a business providing goods, property, or service primarily for personal, family or household purposes” MCL 445.902(1)(g). Nicholas’s allegations against Detroit stem from Sergeant Green’s conduct while serving in his capacity in the Detroit Police Department. There is no legal or empirical basis for concluding that Sergeant Green’s actions were “in the conduct of trade or commerce” as required by MCL 445.903(1). The circuit court, therefore, correctly dismissed plaintiff’s MCPA claim, albeit for the wrong reason.

To the extent Nicholas argues that he has civil rights or constitutional claims that are not barred by the statute of limitations, we decline to consider this issue because it is insufficiently

² Because plaintiff has failed to set forth the specific date of Sergeant Green’s offensive conduct, it is impossible to determine when plaintiff’s MCPA claim “accrued” for purposes of determining whether his claim is barred by MCL 445.911(7).

briefed. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (where a party gives only cursory treatment to an issue, with little or no citation to supporting authority, this Court may deem the issue abandoned). Nicholas offers no substantive discussion in support of his civil rights or constitutional claims, rendering an appropriate analysis of the issue impossible.

Nicholas also argues that the circuit court erred by denying his motion for reconsideration of the circuit court's order granting Detroit's motion for summary disposition. When reviewing a trial court's decision regarding a motion for reconsideration, this Court reviews the trial court's decision for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). As noted earlier, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). In order for the trial court to grant a motion for reconsideration, the moving party "must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3); see also *Churchman*, *supra* at 233. If the moving party merely presents the same issues ruled on by the court, either expressly or by reasonable implication, the court may decline to grant the motion. MCR 2.119(F)(3); *Churchman*, *supra* at 233. Furthermore, a trial court does not abuse its discretion when it denies a motion for reconsideration on the basis that the motion rests on a legal theory and facts that could have been pled or argued before the trial court's original order. *Charbeneau v Wayne County General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Here, Nicholas filed a motion that asked the court to reconsider its order based primarily on the same facts Nicholas had set forth in his response to Detroit's initial motion. The "new" facts that Nicholas argued, including the fact that 92 Alfred was demolished and that eighteen warrants were issued for his arrest, either have no bearing on the statute of limitations issues or could have been raised in Nicholas's response to Detroit's motion. The circuit court, therefore, did not abuse its discretion in denying Nicholas's motion for reconsideration. See *id.*

Affirmed.

/s/ Jessica R. Cooper

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter